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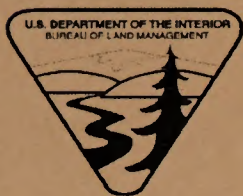
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U.S. Department of the Interior  
Bureau of Land Management

California Desert District  
6221 Box Springs Blvd  
Riverside, CA 92507

December 2002



# Northern & Eastern Mojave Desert Management Plan Record of Decision

An Amendment to the California Desert Conservation Area  
Plan 1980

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# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

California Desert District  
6221 Box Springs Boulevard  
Riverside, CA 92507-0714  
[www.ca.blm.gov](http://www.ca.blm.gov)



December 20, 2002

Dear Friend of the California Desert:

Bureau of Land Management California State Director Mike Pool has signed the Record of Decision approving the Northern and Eastern Mojave Desert Management Plan (NEMO Plan) and amendment to the 1980 California Desert Conservation Area Plan. Enclosed please find a copy of the record.

Copies of the record of decision are being mailed to those who received a copy of the proposed plan and final environmental impact statement or submitted a letter protesting the plan. The record of decision is now available on line at <http://www.ca.blm.gov/cdd/landuseplanning.html>. The approved plan will be available soon and will also be mailed and posted on line.

Completion of the NEMO Plan culminates a comprehensive, collaborative eight-year planning effort that will protect species and their habitats, preserve the desert's natural beauty and resources, and ensure that present and future generations of Americans will continue to enjoy the myriad of multiple-uses on these public lands managed by the BLM.

Sincerely,

Linda Hansen  
District Manager









U. S. Department of the Interior  
Bureau of Land Management  
**News Release**

For Immediate Release: December 20, 2002

CA-CDD-03-15

Contact: Doran Sanchez (909) 697-5220 or Jan Bedrosian (916) 978-4616

**BLM Approves Northern and Eastern Mojave Plan**

The record of decision approving the Northern and Eastern Mojave (NEMO) Plan, an amendment to the 1980 California Desert Conservation Area Plan, has been issued by the Bureau of Land Management (BLM). The planning area encompasses 2.7 million acres of BLM-managed public lands in eastern San Bernardino and Inyo counties and the far eastern edge of Mono County.

The plan outlines the conservation strategy to manage sensitive species and habitats on public lands administered by the BLM. The record of decision will amend BLM's 1980 California Desert Conservation Area Plan and fulfill the BLM's responsibilities under the 1976 Federal Land Policy and Management Act, the 1969 National Environmental Policy Act and the 1973 Endangered Species Act.

State Director Mike Pool added that his signature of the record of decision lifts a number of interim restrictions on public use of the BLM-managed lands that resulted from the lawsuit filed by the Center for Biological Diversity, the Sierra Club, and the Public Employees for Environmental Responsibility in March of 2000. BLM will be publishing notices in the Federal Register of the specific stipulations in the lawsuit settlement that have now expired.

Copies of the record of decision are being mailed to those who received a copy of the proposed plan and final environmental impact statement or submitted a letter protesting the plan. The record of decision is now available on line at <http://www.ca.blm.gov/cdd/landuseplanning.html>. The approved plan will be available soon and will also be mailed and posted on line.

Contact BLM Project Manager Edythe Seehafer in BLM's Barstow Field Office at (760) 252-6021 for more information or to request copies of the plan documents.

-BLM-

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U.S. Department of the Interior  
Bureau of Land Management  
**News Release**

CA-CBD-07-13

For Immediate Release December 20, 2002  
Contact: Dawn Sanchez (909) 637-2520 or Jan Robinson (916) 978-4616

**BLM Approves Northern and Eastern Mojave Plan**

The record of decision approving the Northern and Eastern Mojave (NEMO) Plan, an amendment to the 1980 California Desert Conservation Area Plan, has been issued by the Bureau of Land Management (BLM). The plan encompasses 2.3 million acres of BLM-managed public lands in eastern San Bernardino and Inyo counties and the far eastern edge of Mono County.

The plan outlines the conservation strategy to manage sensitive species and habitats on public lands administered by the BLM. The record of decision will amend BLM's 1980 California Desert Conservation Area Plan and fulfill the BLM's responsibilities under the 1976 Federal Land Policy and Management Act, the 1992 National Environmental Policy Act and the 1994 Endangered Species Act.

State Director Mike Ford signed the record of decision after a number of interim consultations on public use of the BLM-managed lands that resulted from the lawsuit filed by the Center for Biological Diversity, the Sierra Club, and the Public Employees for Environmental Responsibility in March of 2000. BLM will be publishing notices in the Federal Register of the specific requirements in the lawsuit settlement that have now expired.

Copies of the record of decision are being mailed to those who received a copy of the proposed plan and final environmental impact statement or submitted a letter protesting the plan. The record of decision is now available on the BLM website at [www.blm.gov](http://www.blm.gov) and the approved plan will be available soon and will also be mailed and posted on line.

Contact: BLM Project Manager Ellyse Schuster in BLM's Bureau Field Office at (909) 252-6051 for more information or to request copies of the plan documents.

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## RECORD OF DECISION

### Decision

This Record of Decision (ROD) approves, with minor modifications, the Proposed Northern and Eastern Mojave Desert Management Plan (NEMO), an amendment of the 1980 Bureau of Land Management California Desert Conservation Area (CDCA) Plan. The minor modifications from the Proposed Plan include changes in format, wording, and other minor corrections to improve clarity.

This plan was prepared under the regulations implementing the Federal Land Policy and Management Act of 1976 (FLPMA). An environmental impact statement was prepared for the NEMO Plan in compliance with the National Environmental Policy Act (NEPA) of 1969. The Proposed Northern and Eastern Mojave Desert Management Plan and Final Environmental Impact Statement was published in August 2002, and is available on BLM's web site at <http://www.ca.blm.gov>. A summary of the major plan amendment decisions of NEMO includes:

1. Establish Regional Standards for Public Land Health and set forth guidelines for grazing management.
2. Establish two Desert Wildlife Management Areas (DWMAs) encompassing about 312,000 acres that are managed as Areas of Critical Environmental Concern for recovery of the desert tortoise.
3. Establish the Amargosa River and Carson Slough Areas of Critical Environmental Concern in the Amargosa watershed for management of additional listed, endemic, and sensitive species in the planning area, and upgrade the multiple-use class and develop programmatic protection measures on an adjacent area with sensitive bat species.
4. Eliminate the Clark Mountain Herd Management Area for wild horses and burros in the Ivanpah DWMA and adjust the Appropriate Management Level (AML) from 44 to 0 throughout the herd area to provide for recovery of the desert tortoise. In the Chicago Valley Herd Management Area adjust the AML for wild horses and burros in the Amargosa watershed to reflect the current situation and prevent future impacts from the growth of herds on listed plants. AML for wild horses would be adjusted from 28 to 12 to maintain the current herd of animals, and AML for burros would be adjusted from 28 to 0.
5. Establish six segments of rivers in the planning area as eligible for further suitability study for the National Wild and Scenic Rivers System, including portions of the Amargosa River, Cottonwood Creek, and Surprise Canyon Creek.
6. Designate routes of travel.
7. Identify priorities for potential acquisition of private lands and disposal of public lands.
8. Incorporate 23<sup>1</sup> wilderness areas (totaling 1.2 million acres) established by the 1994 California

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<sup>1</sup> The Fort Irwin Military Lands Withdrawal legislation (PL 106-554) has eliminated one wilderness study area—the South Avawatz—that was designated under the California Desert Protection Act and previously referred to in the NEMO FEIS.



Desert Protection Act in the CDCA, and identify multiple use class for 475,000 acres of lands released from wilderness consideration.

Included with the amendments are certain site-specific conservation measures. While these measures are addressed and approved in the Approved Plan, they are not authorized until specifically proposed and addressed through additional site-specific NEPA analyses.

All of the interim measures identified in the Consent Decree in Center for Biological Diversity, et al. v. BLM (C-00-0927 WHA (JCS)) and subject to expiration upon the signing of the ROD for the NEMO planning area, are terminated.

### **Consistency with other CDCA Plan Amendments**

Several other CDCA Plan amendments are concurrently being developed for other regions in the CDCA. Those decisions that are common among these amendments have been developed to be consistent with each other. In addition, the NEMO planning area overlaps one of the adjacent planning areas for one issue. The West Mojave Management Plan, a Multiple Species Habitat Conservation Plan (MSHCP) will be addressing the Inyo California towhee, which has its primary habitat in the West Mojave planning area, but surveys have shown that it now ranges into the NEMO planning area.

### **Alternatives Considered**

Five land use management alternatives were developed for the NEMO Plan and Environmental Impact Statement. They provided decision makers with a range of realistic and distinct options to fulfill the purpose and need for the project and address the nine scoping issues identified in Section 1.3 of the NEMO plan.

#### **1. No Action—Current Management**

This alternative describes existing resource conditions with current management practices and present land use allocations. Included are many decisions previously made but not implemented.

#### **2. Recovery Plan Alternative**

This alternative provides for managing public lands for recovery of T&E species through recommendations contained in their respective recovery plans (USFWS). It emphasizes conserving biodiversity, monitoring watershed function, and non-consumptive uses. In DWMA's and the Amargosa watershed, this alternative includes lands in addition to critical habitat identified in the recovery plans to achieve these purposes, and substantial additional private lands for acquisition.

#### **3. Two DWMA Alternative**

This alternative provides for managing public lands using strong conservation measures to provide for recovery of T&E and other endemic and sensitive species in the affected areas. Amargosa watershed species are managed through recommendations contained in their respective recovery plans (USFWS). It emphasizes ecosystem management, monitoring watershed function, and non-consumptive uses, while balancing for low-impact multiple uses. In the Amargosa watershed, this alternative includes lands in addition to critical habitat identified in the recovery plans to achieve these purposes, and identifies additional private lands for acquisition.



#### **4. One DWMA Alternative**

This alternative provides for managing public lands with a reduced emphasis on ecosystem management and watershed function, and increased emphasis on multiple uses of public resources, while still providing for recovery of T&E species.

#### **5. Modified Two DWMA Alternative – Proposed Plan**

This alternative provides for managing public lands using strong conservation measures to provide for recovery of T&E and other endemic and sensitive species in the affected areas. Amargosa watershed species are managed through recommendations contained in their respective recovery plans (USFWS). It emphasizes ecosystem management, monitoring watershed function, and non-consumptive uses, while balancing for low-impact recreational and other multiple uses. In the Amargosa watershed, this alternative includes lands in addition to critical habitat identified in the recovery plans to achieve these purposes, and seeks to balance modest private lands identified for acquisition with potential exchanges.

### **Environmentally Preferable Alternative**

Federal environmental quality regulations (40 CFR 1505.2 (b)) require that an agency identify the environmentally preferable alternative or alternatives in the ROD. Alternative 2 is the environmentally preferable alternative. Management prescriptions for listed, sensitive, and endemic species and their habitats are more restrictive under Alternative 2, based on recovery plan recommendations for the desert tortoise. Alternative 2 is also more restrictive based on increased limits on the amount of surface area disturbance, because cattle grazing would not be allowed in DWMA, desert tortoise bioregions would have fewer designated open routes in the routes of travel network, all washes would be designated closed, and competitive vehicle racing with speed as a primary factor would be eliminated throughout the planning area. The Proposed Plan and Alternative 2 have the same management prescriptions for the Amargosa watershed and the listed, sensitive, and endemic species therein. Alternative 2 covers more land dedicated to conservation management of special status species and their habitats for desert tortoise and the Amargosa vole (i.e., DWMA and ACEC are larger) in the Central Amargosa watershed. The Proposed Plan and Alternative 2 cover the same lands dedicated to conservation management of special status species for listed plants in the Upper Amargosa watershed. For a complete comparison of alternatives, see Table 2.9 in the Proposed Plan/FEIS.

### **Management Considerations**

This decision emphasizes ecosystem management with strong conservation measures and also broadly provides for multiple uses of public lands. A summary of the key management considerations involved in the decision is as follows:

#### **Standards and Guidelines for Public Land Health**

Regional standards and guidelines are selected instead of National standards and guidelines because they were tailored to the local desert situation with involvement by the Desert Advisory Council, and broadly apply to all resources and management programs.



### **Desert Tortoise Recovery**

The DWMA and the defined array of management prescriptions best allows for recovery over a large area with a generally less restrictive array of specific management prescriptions. Specific features such as deletion of some critical habitat, changes to standard mitigation and compensation measures, inclusion of some cattle grazing, designation of both open and closed roads and washes, and the 1% surface disturbance limitation on federal lands apply up-to date scientific and provide a balanced commitment to promoting desert tortoise recovery and multiple use management by reducing conservation-use conflicts.

### **Amargosa Watershed**

A comprehensive approach to managing listed, sensitive, and endemic species and habitats is included and features all of the critical habitat and approximately 90% coverage of the known or predicted habitat for 16 special status species. This aspect of the plan greatly diminishes the chance of future species listings. Included in the array of management prescriptions are the Amargosa River Area of Critical Environmental Concern, specific measures for invasive species, water management measures for T&E plants and the Amargosa vole, and strategies for cooperative development of an informational database of the watershed, between local, State, and federal agencies to better understand and protect aquatic systems.

### **Wild and Scenic Rivers**

The application of the eligibility criteria from the Wild and Scenic Rivers Act in the planning area has identified a total of six segments on the Amargosa River and Cottonwood and Surprise Canyons that will undergo suitability study. These conclusions are based on the determination that the rivers possess the quality of "free-flowing rivers" which is defined in the context of dams and other impediments, and that they have outstandingly remarkable values. The eligibility criteria are given in the Wild and Scenic Rivers Act. They reflect the existing situation along river and creek segments rather than anticipated or proposed future conditions, and are not designed to change the existing situation where a problem exists. This study will provide the public and other agencies additional opportunities to provide input as to classification recommendations for the three rivers, and whether they are appropriate additions to the National Wild and Scenic Rivers System.

### **Routes of Travel Designations**

All routes designated by NEMO are designated as open, closed or limited. As a result of applying specific designation criteria to those designated routes, about 8% of the inventoried routes in the desert tortoise bioregions are closed, and another 8% of the routes are limited. This approach to designation and the consideration of specific designation criteria to implement 43 CFR 8342.1 are necessary because 1) there are so many species, cultural resources, and other sensitivities that large-scale, existing routes areas simply can no longer be supported, and 2) to assure that designations are not arbitrary. The resulting road and washes closures are appropriate considering that most previous public and/or motor-vehicle access closures throughout the CDCA (i.e., military, parkland, and wilderness areas) had no or little basis in comprehensive conservation of species and habitats. Route closures were due to specific resource considerations. Another 8% of the roads are limited to provide some access and protect natural and artificial water sources or other sensitive resources, or recognize existing limitations such as those on and adjacent to Ivanpah dry lake bed, which account for almost half of the limited routes.

The routes of travel not designated in NEMO at this time will be designated through a subsequent plan amendment to be completed by June 2004.



### **Competitive Off-Highway Vehicle Events**

This decision eliminates the existing Barstow to Vegas racecourse within the NEMO planning area. This approach to the decisions on the competitive race corridors is also science-based: almost 90% of the Barstow to Vegas alignment in the planning area lies within the Ivanpah DWMA or the Mojave National Preserve. General design criteria contained in 1980 CDCA Plan MUC Guidelines are also eliminated because of the extreme difficulty in finding environmentally suitable opportunities in the planning area.

### **Land Ownership**

The general proposal is to acquire private lands in conservation management areas and dispose of federal lands in areas low in species and habitats and other resource values. No specific land acquisition and disposal are addressed in the plan, but some parcels are identified for potential acquisition and disposal to advance the goals and objectives of the Plan, including providing for community expansion. Proposing and completing lands actions requires willing landowners, local government review, and specific NEPA analyses. A subsequent plan amendment may be required for any disposal of federal lands. The preferred method for accomplishing this goal is land exchange to support local government tax base. This approach supports goals to improve manageability of sensitive federal lands, usability of private lands, reducing local government services costs, and minimizing the effects on local tax base.

### **Incorporation of Congressional Wilderness Designations into Land Use Plans**

Twenty-three areas wilderness areas created by Congress through enactment of the 1994 California Desert Protection Act are formally incorporated in the CDCA plan through NEMO.

### **Endangered Species Act Consultation**

The Congress specified that the purposes of the Endangered Species Act of 1973 (Public Law 97-304) (ESA), as amended, "are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions" (Sec. 2(b)). The ESA states it "to be the policy of the Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act" (Sec. 2(c)(1)). The fulfillment of these purposes is a fundamental issue in this planning effort.

The ESA further provides that "each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species" (Sec. 7(a)). By Federal regulations (Code of Federal Regulations, Volume 50, Part 402) implementing the provisions of Section 7 of the ESA, the BLM and other Federal agencies must consult with the U.S. Fish and Wildlife Service (USFWS) on projects, plans, and actions that may negatively affect a threatened or endangered species. The USFWS then issues a biological opinion relative to jeopardy and adverse modification. A similar review, referred to as a conference, is required for species that are proposed for federal listing.

The BLM has determined that there are six federally listed species affected by the CDCA Plan in the NEMO Planning Area: the desert tortoise (*Gopherus agassizii*), the Amargosa vole (*Microtus californicus scirpensis*), the Amargosa niterwort (*Nitrophilia mohavensis*), the Ash Meadows gumplant



(*Grindelia fraxino-pratensis*), the least Bell's vireo (*Vireo bellii pusillus*), the southwestern willow flycatcher (*Empidonax trailli extimus*), and the Inyo California towhee (*Pipilo crissalis eremophila*). In addition, the mountain plover is proposed for federal listing as a threatened species.

BLM initiated consultations with USFWS on the effects of the NEMO Plan on these species. The USFWS issued a biological opinion for the desert tortoise on projects that may be proposed in the future on June 17, 2002, for the Amargosa vole on September 23, 2002, for the Amargosa niterwort and Ash Meadows gumplant on February 27, 2002, and for the least Bell's vireo and the southwestern flycatcher on December 17, 2002. Sections 7(b)(4) and 7(o)(2) of the Endangered Species Act do not apply to listed plant species. Thus, there are no reasonable and prudent measures and no terms and conditions for plants. Nevertheless, protection of listed plants from take is provided to the extent that the Act prohibits the removal and reduction to possession of federally listed endangered plants or the malicious damage of such plants on areas under federal jurisdiction. NEMO has no affect on the Inyo California towhee.

#### **A.1 Reasonable and Prudent Measures [from the Desert Tortoise BO]**

The USFWS believed the following reasonable and prudent measures are necessary and appropriate to minimize take of the desert tortoise during activities related to grazing, management of burros, and casual use associated with recreation and mining:

1. The Bureau shall re-issue annual permits for livestock grazing only if the permittee is in full compliance with [the tortoise protective measures] on grazing.
2. The Bureau shall ensure that only qualified personnel are allowed to handle desert tortoises, conduct clearance surveys, and monitor for compliance with the protective measures proposed by the Bureau and the terms and conditions of this biological opinion.
3. The Bureau shall avoid and minimize take of desert tortoises during removal of burros.
4. The Bureau shall provide information on the desert tortoise to anyone requesting information on casual use associated with recreation and mining.
5. The Bureau shall determine the level of desert tortoise mortality associated with wildlife guzzlers and other managed waters and take measure to minimize this mortality.

The Service's evaluation of the effects of the proposed action includes consideration of the measures developed by the Bureau and repeated in the Description of the Proposed Action portion of this biological opinion, to minimize the adverse effects on the desert tortoise of grazing, management of burros, and casual use associated with recreation and mining. The Bureau also considered the management of grazing that occurs under the Service's previous biological opinions, as modified by Bureau proposals described in this biological opinion. Any subsequent changes in the minimization measures proposed by the Bureau or in the conditions under which cattle grazing currently occurs may constitute a modification of the proposed action and may warrant re-initiation of formal consultation, as specified at 50 CFR 402.16. These reasonable and prudent measures are intended to clarify or supplement the protective measures that were proposed by the Bureau as part of the proposed action.

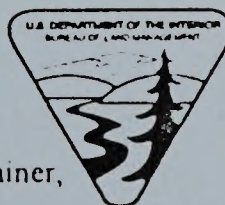
#### **A.2 Terms and Conditions [from the Desert Tortoise BO]**

To be exempt from the prohibitions of section 9 of the Act, the Bureau must comply with or ensure that any permittee complies with the following terms and conditions, which implement the reasonable and





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prudent measures described above and outline reporting and monitoring requirements. These terms and conditions are non-discretionary.

**1. The following terms and conditions implement reasonable and prudent measure 1:**

- a. The Bureau shall prepare an annual report to be delivered to the Service by April 15 that addresses the previous grazing year ending February 28. The report shall provide, for each allotment in desert tortoise habitat, a brief summary of: the level of utilization of perennial plants; the actual amount of grazing use (i.e., animal unit months); trend data on plant communities in grazed areas; management actions and grazing decisions taken to adjust grazing use; management action taken to address conflicts with the desert tortoise; the results of construction and replacement of range facilities; and the circumstances regarding any desert tortoises known to have been injured and killed due to livestock grazing. In addition, any public land health determinations made for grazing allotments shall be attached to the annual report.
- b. If an allotment fails to meet the public land health standards based on current livestock use in habitat of the desert tortoise, the Bureau shall remove grazing from the affected areas until the public land health standards are met. This grazing decision shall be reviewed by the Service through, at a minimum, informal consultation.

**2. The following terms and conditions implement reasonable and prudent measure 2:**

- a. Only biologists authorized by the Service under the auspices of this biological opinion shall handle desert tortoises.
- b. All handling of desert tortoises and their eggs, relocation of desert tortoises, and excavation of burrows shall be conducted by an authorized biologist in accordance with recommended protocol (Desert Tortoise Council 1999).
- c. Only biologists approved or authorized by the Service under the auspices of this biological opinion shall conduct pre-project clearance surveys for the desert tortoise or monitor project activities for compliance with the proposed protective measures.
- d. The Bureau shall submit the names(s) and credentials of the proposed biologist(s) to the Service for review and approval at least 30 days prior to the onset of activities. No activities shall begin until a biologist is approved by the Service.

**3. The following term and condition implements reasonable and prudent measure 3:**

When burros are being removed from within desert tortoise habitat, the Bureau shall have authorized or approved biologists present, as appropriate, to ensure desert tortoises are moved from harm's way or avoided, if necessary. These protective measures for the desert tortoise shall be implemented when the removal of burros is likely to result in concentrated activity by horses, burros, or workers or ground disturbance.

**4. The following term and condition implements reasonable and prudent measure 4:**

The Bureau shall provide information on the desert tortoise, its status, the protection it receives under the Endangered Species Act, and the actions that can be taken to avoid killing or injuring



desert tortoises when working or recreating in the desert to anyone requesting information on casual use associated with recreation and mining.

**1. The following terms and conditions implement reasonable and prudent measure 5:**

- a. Within 2 years of issuance of this biological opinion, the Bureau shall inventory all guzzlers located within desert tortoise habitat and assess their potential to trap desert tortoise. The assessment of the potential to trap desert tortoises shall be based on the design of the guzzler and the abundance of desert tortoises within the area of the guzzler.
- b. Within 3 years of the issuance of this biological opinion, the Bureau shall retrofit all guzzlers that have identified as having the potential to trap desert tortoises.
- c. The Bureau shall retrofit all other guzzlers within desert tortoise habitat within 5 years of the issuance of this biological opinion.
- d. If a desert tortoise is found trapped in any managed water or guzzler, the water or guzzler shall be retrofitted within four weeks. If the water or guzzler cannot be retrofitted within that time frame, it shall be fenced to preclude entry by desert tortoises.

**A.3 Reporting Requirements [from the Desert Tortoise BO]**

By January 31 of each year this biological opinion is in effect, the Bureau shall provide a report to the Service that provides details on each desert tortoise that is found dead or injured. The information shall include the location of each mortality, the circumstances of the incident, and any actions undertaken to prevent similar instances from occurring in the future. The annual report shall also describe activities that the Bureau implemented (e.g., the amount of road maintained, habitat rehabilitated restored, etc.) within habitat of the desert tortoise. The annual reports shall also evaluate the range conditions that are specified in the previously issued biological opinions for grazing in the California Desert Conservation Area.

**B.1 Reasonable and Prudent Measures [from the Amargosa Vole BO]**

This biological opinion does not contain any reasonable and prudent measures or terms and conditions.

**B.2 Terms and Conditions and Incidental Take Permit [from the Amargosa Vole BO]**

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption....Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The California Desert Conservation Area Plan and the Northern and Eastern Mojave bioregional plan describe numerous programs under which the Bureau will need to make specific decisions with regard to future actions. Although we have evaluated the general nature of the effects of these actions, both negative and positive, on the Amargosa vole, we cannot assess the potential effects of specific actions because information on the location, timing, nature, and other aspects of the actions are not known at this time. Consequently, we cannot provide an exemption from the prohibitions against take, as described in section 9 of the Act, for the incidental take that may result from these actions.



Given this limitation, this biological opinion provides an exemption from the prohibitions against take for the incidental take of Amargosa voles that may result from casual use associated with recreation and mining that is authorized by the Bureau through the California Desert Conservation Area Plan. We anticipate that casual use associated with recreation and mining are likely to result in relatively few mortalities of Amargosa voles. We cannot anticipate the precise numbers of Amargosa voles that may be killed because of the potential annual variation in the number of individuals of the taxon and the unpredictability of when activities associated with casual use will result in mortality of Amargosa voles. We also recognize that, because of the small size of the Amargosa vole, individuals that are killed as a result of casual use are unlikely to be found.

### **B.3 Reporting Requirements [from the Amargosa Vole BO]**

The report shall include the date, time, location of the carcass, a photograph, cause of death, if known, and any other pertinent information.

To monitor the extent of mortality that may be associated with casual use, the Bureau shall contact the Service immediately (within 3 working days) if an Amargosa vole is killed....The report shall include the date, time, location of the carcass, a photograph, cause of death, if known, and any other pertinent information....At that time, the Service and the Bureau shall review the circumstances surrounding the incident to determine whether protective measures should be required. Casual use associated with recreation and mining may continue pending the outcome of the review, provided that the use was in compliance with all of the Bureau's applicable management guidelines and regulations.

The Bureau should inform the Service, on an annual basis, of the actions that it has implemented (e.g., the amount of land acquired, acreage of exotic plant species removed, etc.) within habitat of the Amargosa vole. We would also appreciate other information that is collected on wildlife in the action area, such as the results of any inventories of springs.

### **C.1 Reasonable and Prudent Measures for Southwestern Willow Flycatcher and Least Bells Vireo [from the Riparian Animals BO]**

This biological opinion does not contain any reasonable and prudent measures or terms and conditions for these animals.

### **C.2 Reporting Requirements [from the Riparian Animals BO]**

To ensure that the measures proposed by the BLM and the terms and conditions required above are effective, BLM shall: (1) contact the Service immediately if any individuals of the three riparian animals are killed or injured. At that time, the Service and the Bureau shall review the circumstances surrounding the incident to determine whether additional protective measures are required. Authorized casual uses may continue pending the outcome of the review, provided the BLM's management plans and proposed interim measures, as well as the Service's terms and conditions of this biological opinion, have been and continue to be fully implemented; and (2) provide a written annual report to the Carlsbad and Ventura field offices of the Service by January 30 for the preceding year while this biological opinion is in effect. The report shall document implementation of the terms and conditions in this incidental take statement activities conducted and approximate acreage of habitat affected by agency activities; problems encountered in implementing terms and conditions; recommendations for improving the conservation program for the species at issue; results of surveys, evaluations, and information on new locations of the species, etc. This information will assist the Service, BLM, and CDFG in evaluation of the effectiveness



of conservation measures for the species. If the finding of dead or injured toads or annual evaluations indicate that management efforts are not effectively minimizing habitat degradation and incidental take, reinitiating of consultation would be required if adjustments to management are not otherwise agreed upon by the BLM and Service.

### **Consistency Requirements**

In accordance with BLM resource management planning regulations (43 CFR 1610.3-2) BLM must identify any known inconsistencies with State or local plans, policies, or programs. BLM must also provide the Governor with up to 60 days in which to identify any inconsistencies and submit recommendations. No known inconsistencies have been identified, either by BLM or the Governor, for the NEMO plan.

### **Consultation with the State Historic Preservation Officer**

The Bureau of Land Management initiated formal consultation with the State Historic Preservation Office (SHPO) by letter dated June 21, 2000. The BLM initiated consultation in accordance with the Programmatic Memorandum of Agreement Among the Advisory Council on Historic Preservation, the Bureau of Land Management, and the California State Historic Preservation Officer Regarding the California Desert Conservation Area (1980), and the State Protocol Agreement Between The California State Director of The Bureau of Land Management And The California State Historic Preservation Officer (1998). Consultation regarding historic properties that might be affected by this plan amendment is ongoing. BLM has rendered findings and determinations regarding the eligibility and effects for historic properties and has requested SHPO concurrence. BLM has proposed to modify the existing CDCA Programmatic Agreement with SHPO to provide for phased implementation of inventory and evaluation of historic properties that might be affected by the designation of routes. BLM will implement the terms and conditions of the Programmatic Agreement as agreed to with SHPO.

### **Consultation with Native Americans**

To comply with Executive Orders regarding Government-to-Government relations with Native Americans, formal and informal contacts were made with a number of tribal councils at several points in the planning process. Advice on the nature and progress of the project was provided, and concerns and ideas to help define and direct the planning process were solicited. One of the tribes has written a letter of formal support for the Proposed Plan. These entities will continue to be contacted and comments requested at key milestone points as the planning process continues. Tribal councils formally consulted include the Ft. Mojave Reservation, Chemehuevi Indian Reservation, Colorado River Indian Tribes Reservation, and Timbisha Tribal Reservation.

### **Environmental Protection Agency**

The Environmental Protection Agency (EPA) received copies of both the DEIS and FEIS. EPA comments on the DEIS included its highest rating – “LO” (Lack of Objection). This rating’s definition includes “The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal.”

### **Other Consultations**

As noted in several of the above paragraphs, a number of agencies and interests have been involved in



development of the Plan. As lead agency, BLM has made a concerted effort to coordinate and consult with all agencies and interests, in addition to the three noted just above. Particular among these include local government and the Bureau's own Desert Advisory Council.

### **Mitigation Measures**

Approved mitigation measures were presented in Appendices A, E, F, G, and H of the Proposed Plan/FEIS, relating to desert tortoise, grazing, desert restoration, limitations on cumulative new surface disturbance, Amargosa niterwort and Ash Meadows gumplant, and Amargosa vole. All practicable means to avoid or minimize environmental harm by the plan have been adopted.

### **Plan Monitoring, Evaluation, and Adaptive Management**

Plan monitoring, evaluation and adaptive management are essential components of natural resource management. They provide information on the relative success of implementing management strategies to achieve plan goals and objectives. The implementation of the NEMO Plan amendments will be monitored to ensure that management actions follow prescribed directives. Plan evaluation compares the status of the resources (as determined by field assessments) with the goals and objectives. Some maturation of projects is needed before results can be discerned. About half the plan decisions will be evaluated in five years and the remainder in 10 years. With the information generated by this evaluation, managers can objectively adjust or adapt management programs as needed.

The processes of monitoring, evaluation and adaptive management share the goal of improving effectiveness and permitting dynamic responses to increased knowledge and a changing landscape. The process itself will not remain static and will be periodically evaluated to ascertain if the monitoring questions and standards are still relevant, and the program would be adjusted as appropriate. Some field monitoring items may be discontinued and others added as knowledge and issues change.

At some future date, within three months following the U.S. Fish and Wildlife Service updating and republishing its Desert Tortoise Recovery Plan, BLM will conduct and complete a review of the CDCA Plan for the need and opportunity for adaptive management.

### **Public Involvement**

This section relates public and agency involvement in the planning process. Subsections discuss issue-identification and public scoping, plan development, the draft and final plan and environmental impact statement, and consultations with the U.S. Fish and Wildlife Service (USFWS), the State Historic Preservation Office, and Native American tribal councils.

#### **Issue Identification/Public Scoping**

The Council on Environmental Quality regulations (40 CFR 1501.7) and BLM planning regulations (43 CFR 1610) require an early and open process (scoping) for determining the planning issues. The regulations also require that agencies provide opportunities for public involvement in the planning process, including review of the planning criteria and the Draft Plan/EIS. Efforts have been made to make the public aware of the planning process and of opportunities for involvement.

Public scoping began in 1995 for the NEMO Plan, in conjunction with National Park Service scoping for the Death Valley National Park and Mojave National Preserve General Management Plans. On August



31, 1995, a notice was sent to the public, media, agencies, and other organizations on the BLM California Desert District mailing list (about 6,000 names), describing the purpose of interagency planning covering issues within the NEMO planning area. On September 5, 1995, a Notice of Intent to Prepare a Plan and EIS was published in the Federal Register, with a schedule for upcoming scoping workshops in which the public was invited to participate. Public workshops were held from September 21 through 27, 1995 at Pasadena, San Bernardino, Barstow, Baker, Needles, Ridgecrest, Independence, Lone Pine, and Furnace Creek, California, and in Las Vegas, Nevada. About 250 people attended the workshops. These workshops were used to identify issues and concerns to be addressed in the NEMO Plan and National Park Service management plans and accompanying EIS documents for the area. These public workshops were augmented by interagency scoping workshops to further clarify public comments and identify cross-jurisdictional and other issues of concern. A summary of the issues identified during the scoping workshops was sent out in a newsletter to all participants in February 1996.

In February 1997 a second newsletter was published online and a second notice was sent out to inform the public and local media of 10 additional public workshops that were held from April 14 through 24, 1997 at the same locations as stated above. These workshops were used to scope alternative management approaches. About 330 people attended these workshops. Additional scoping issues were identified at these workshops. A third letter was sent out to the updated mailing list in April 1998. In August 1998, BLM held additional public meetings to clarify the proposals and ask for any additional issues, alternatives, or concerns, not presented in earlier scoping meetings, and present the framework for a desert tortoise conservation strategy developed that spring. These issues are presented in Table 5-3 of the FEIS, with their resolution in the Plan. The scoping process was concluded in November 1998. A summary of the public scoping process follows:

#### **Public Scoping Process**

- 10 workshops in 1995 with 250 individuals attending
- 10 workshops in 1997 with 333 individuals attending
- 7 meetings in 1998 with 86 individuals attending, plus letters and emails
- Discussions with 12 local, state, and federal agencies; 4 tribal councils; 1 utility company, 1 major mining company, and 1 major land owner

The total number of public comments was 201. Many issue subjects were covered: e.g., planning process, data collection, research and monitoring, management mandates, and a number of resources and use values. Six major issues were identified that included the bulk of individual comments. These six issues should be considered as aggregates of comments. For instance, addressing the issue of recovery of the desert tortoise must include a consideration of several related comments such as management of a variety of uses, control of ravens, monitoring, research, and coordination among agencies and interest groups.

#### **Plan Development**

A number of federal, state, and local agencies and non-agency interests have been involved throughout the planning process since public scoping. These entities helped in developing and analyzing data, developing, focusing, and reviewing plan proposals and alternatives, developing an understanding of the causes and effects of uses on species and habitats, and developing public support for the planning process. A follow-up two-day interagency meeting was held in Barstow, California to discuss alternatives and comments heard at the April, 1997 workshops. Attendees included the Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, California State Parks, and San Bernardino County. To provide a basis for best science, an interagency team was formed in April 1997 to develop biological recommendations, comprised of biologists and other natural resource specialists. Their



recommendations were circulated to USGS and other biologists, including current researchers in desert tortoise-grazing interactions, raven management, and bat management for comment and review. These recommendations were then reviewed by management for consistency with current policies and with adjacent planning efforts, and to identify issue areas. With feedback from the Desert Advisory Council, focus areas for additional public scoping were identified.

A public mailing list of about 2,800 individuals, interest groups, and agencies has been developed throughout the planning period. At several times throughout the planning process, notifications were sent to this group on the following topics: summary of scoping issues, status of alternative development, development of biological recommendations and further scoping, completion and availability of the inventory of routes of travel and its availability for review or purchase. Finally, elements and status of the plan were reviewed at some of the regular public meetings of BLM's Desert Advisory Council over the years.

### **Distribution of the Draft Plan and Draft EIS**

Notice of availability of the Draft Plan/EIS was distributed to the entire mailing list on April 13, 2001. Copies were also provided to anyone expressing an interest in the planning process. In addition, copies were provided to public libraries throughout the planning area for public review and reference. Copies were also sent to the federal, state, local agencies, Indian tribal councils, California Desert Advisory Council, interest groups, local federal and state elected officials, and individuals with a request for review. The public review period for the DEIS spanned over six months due to popular request for more review time based upon document complexity and the high level of public concern. Ten public meetings were held and by the end of the comment period over 1,200 comments were received. These comments were in the form of letters, faxes, email, and public meeting comments.

On numerous occasions, in addition to the above-noted public meetings, BLM provided overviews on the DEIS to individuals, interest groups, local governments, the BLM Desert Advisory Council, Death Valley National Park's Commission, and tribal councils. In addition BLM notified the public that the Preferred Alternative routes of travel designations proposal was available for review on 7.5-minute quadrangle maps covering the entire Planning Area.

Resolutions from BLM's Desert Advisory Council were developed at the Council's meeting on December 8, 2001, and were included with the set of public comments on the DEIS.

### **Proposed Plan and FEIS**

Developing the Proposed Plan and final EIS (FEIS) primarily involved a process of revising the DEIS based upon review and consideration of the public comments received. As a result of the public comments received, BLM has been able to strengthen, refine, and clarify the text, proposed decisions, analysis, and conclusions.

The U.S. Forest Service's (USFS) Content Analysis Team was contracted to analyze and synthesize public comments into concise "public concern" statements. These public concerns statements were grouped into topics and subject groupings through a process developed by USFS and provided for a number of federal agencies over recent years. The advantages of going to this team are twofold: professional expertise using sophisticated methodology and independent review. These reports allow analysts to identify a wide range of public concerns, analyze the relationships among them, and summarize comments into "public concern statements."



A public concern statement represents one unique comment from an individual or group, or the common concern of numerous people or groups. Over 420 public concern statements were provided to BLM by the above-described process. BLM project management personnel reviewed this list of public concern statements and associated sample statements and assigned appropriate staff to each public concern. In making these assignments, it became clear that some of the public concerns could be combined. Assigned staff evaluated the public concern statements and associated sample statements. They made revisions to this Plan and FEIS as appropriate, and prepared written response to public concern statements that were presented in the Proposed Plan and FEIS.

The release of the FEIS initiated a 30-day review and protest period. This period began on August 23, 2002, with the publishing of a notice of availability in the Federal Register, and concluded on September 23, 2002. Persons and organizations on the mailing list received a copy of the document. The FEIS was also posted on the BLM California website

### Public Protests

The BLM Director has dismissed all protests on the NEMO plan. By regulation (43 CFR 1610.5-2) the decision of the Director on plan protests is the final decision of the Department of the Interior.















**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT**

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